

Remarks

Applicant is submitting this Amendment in response to the January 14, 2009 Office Action in the application identified above. The time for response without payment of fees expired April 14, 2009. Applicant is submitting herewith a Petition for a Two Month Extension of Time for responding to the Office Action, along with the required fee. The time for response now will expire June 15, 2009. Claims 12-37 were originally presented after entry of a preliminary amendment. Applicant has cancelled claims 12-30 and 33-37 and substituted new claims 38-55. Applicant has also rewritten claims 31 and 32 in independent form including all the limitations of their base claim.

Applicant discloses, and claims in independent claim 38, a soft serve food product manufacturing, storage, and dispensing machine. The machine comprises a source of soft serve food product, a closed loop circulation system adapted to receive soft serve food product from the source, and a dispensing head connected to the closed loop circulation system adapted to dispense soft serve food product from the closed loop circulation system.

The closed loop circulation system comprises:

(a) an emulsification assembly having a first end and a second end, the emulsification assembly adapted to emulsify soft serve food product in the closed loop circulation system; and

(b) a pump connected between the first and second ends of the emulsification assembly, the pump being adapted to withdraw soft serve food product from one end of the emulsification assembly and to introduce the soft serve food product withdrawn from the one end of the emulsification assembly into the other end of the emulsification assembly, thereby circulating soft serve food product in the closed loop circulation system.

The Examiner has rejected claims 12-37 previously presented in this application under 35 USC 112, second paragraph, as allegedly indefinite for failure to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner bases the rejection on a “double inclusion” of the term “soft serve food product” in claims 12, 16, and 21. Applicant has used the term “soft serve food product” a plurality of times in the claims because Applicant’s invention involves a number of

structural elements, each of which handles “soft serve food product.” Specifically, in independent claim 38, a supply supplies “soft serve food product,” a closed loop circulation system receives “soft serve food product” from the supply, an emulsification assembly emulsifies “soft serve food product” in the closed loop circulation system, a pump circulates “soft serve food product” in the closed loop circulation system, and a dispensing head dispenses “soft serve food product” from the closed loop circulation system. In each instance, a person skilled in the art would be able to tell if an activity involves the structural elements recited in claims and if “soft serve food product” is handled by those elements in the manner specified in the claims. In other words, a person skilled in the art would be adequately apprised of the scope of the claims in a manner required by the second paragraph of 35 USC 112. The Examiner has not presented any evidence to the contrary. Using terminology more than once in a claim is not evidence supporting a position that a claim fails to provide the notice of claim scope required by 35 USC 112. The Examiner thus is respectfully requested to reconsider and withdraw the 35 USC 112 rejection of this application.

The Examiner has rejected claims 12-30 and 33-37 under 35 USC 102(b) as allegedly anticipated by Curry et al. US Patent 5,030,465 (“the Curry patent”). The Curry patent, however, does not show all the elements of the claims originally presented or the elements of the claims now in the application. Specifically, independent claims 38 and 55 specify a closed loop circulation system. There is no closed loop circulation system shown or suggested in the Curry patent. The Curry patent refers to an open loop series connected arrangement of a refrigerated source of liquid food substance 21, a pump 30, a freeze tube assembly 32, and a dispensing valve assembly 44. There is no connection between the inlet of the freeze tube assembly 32 and the outlet of the freeze tube assembly 32 that would permit circulation of food in a closed loop. There also is no pump that would accomplish circulation as in claim 38. There is no meaningful emulsification in the structure of the Curry patent.

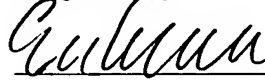
The Examiner has alleged that Figure 2 of the Curry patent shows a closed loop circulation system, that elements 25, 23, and 32 in the Curry patent are an emulsification assembly, and that elements 74 and 100 are motor driven emulsification elements. In response, Applicants are submitting herewith a Declaration of Robert Blinn which relates

the results of a computer simulation of the operation of the structure shown in the Curry patent. The computer simulation clearly demonstrates that there is no closed loop circulation system and that no emulsification occurs in the freeze tube assembly 32 of the Curry patent. Accordingly, the 35 USC 102 rejection of the claims is inappropriate and ought to be withdrawn.

Applicant has rewritten claims 31 and 32 in independent form so that they include all limitations of the base claim. These claims are now allowable as indicated by the Examiner.

For the reasons stated above, this application is in condition for allowance and should be passed to issue.

Respectfully submitted,



Eugene S. Indyk

Registration No. 30,711
366 Rue Road
Monroe Township, NJ 08831
Telephone No.: (732) 521-3926
E-Mail:
eugeneindyk@indyklegal.com